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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,353	08/24/2001	Richard M. Hall	1320.02	8397
21901	7590	05/30/2008	EXAMINER	
SMITH HOPEN, PA			BROWN, MICHAEL A	
180 PINE AVENUE NORTH			ART UNIT	PAPER NUMBER
OLDSMAR, FL 34677			3772	
			MAIL DATE	DELIVERY MODE
			05/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/682,353	HALL, RICHARD M.	
	Examiner	Art Unit	
	MICHAEL BROWN	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 February 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 and 34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Note: A final review of the case provide art that can be used to reject the claims.

Thus, a non-final rejection has been done. However, in order to expedite the prosecution of this application the examiner would like to have a telephonic interview with the attorney to attempt to allow this case.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7-11, 16-18, 20-21, 23-24 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dellinger '373 in view of Razdolsky.

Dellinger discloses in figures 1-9 a magnetic orthodontic appliance that anticipates a dieting aid comprising at least one maxillary frame 16, and a mandibular frame 18, a first magnetic means 30a, secured to the maxillary frame, a second magnetic means 30, secured to the mandibular frame, the maxillary and mandibular frames are constructed for dental quadrants (fig. 1), the first magnetic means on the maxillary has a first polarity and the second magnetic means has a second polarity opposite the first polarity (fig. 4), the first and second magnetic means are split pole magnets (fig. 4), the frame includes buttress (at 26, 28), which support the first and second magnetic means, the first and second magnetic means are disposed on the

buccal side of the frame (fig. 4-fig. 6), the frames substantially cover the external surface of the teeth of the dental quadrants over which the frame is secured (fig. 1), the frames include a tooth covering 42, and side walls (the side wall extending upwardly from 20 and 16), the sidewalls are disposed on opposite sides of the cover, the cover is imperforate, the first and second magnetic means are replaceable, the first and second magnetic means includes substantially planar surfaces (fig. 4), that are received in collet formations, at least one of the frames is cast as a single piece resiliently deformable (elastic plastic), the side wall of the frame allows the undercut of the teeth with whose side wall is in contact to accommodate the barrel shape of the teeth above the gums. However, Dellinger doesn't disclose extensible and retractable screws. Razdolsky teaches in figures 1-5 a mandibular distractor comprising extensible retractable screws 4, that are used to adjust frames 3 on a user's teeth. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the extensible retractable screws as taught by Razdolsky could be used to attach the maxillary and mandibular frames disclosed by Dellinger to the teeth. The extensible and retractable screws would allow the frames to be adjustable to fit different sized mouths.

Claims 3, 6, 12-15, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Smiley '895.

Smiley teaches in figures 1-8 an integrated oral magnetic osteogenic appliance comprising interdentally extending nibs (the waved shaped lower surface on the bottom

of 11 provides nibs on the lingual side, shoulder formation (the top of 33 provides a shoulder), and first and second dentitions 33, the first and second magnetic means (26, 27) can be secured using acrylic compound mass (col. 3, lines 32-35) and screw threads (provided on stud 32) formed in the first and second magnets 27'. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the nibs on the lingual side, the shoulder formation on the first and second magnetic means, the first and second dentitions, the acrylic compound mass and the screw threads as taught by Smiley could be substituted for the means for holding the magnetic means disclosed by Dellinger. The nibs could be used to prevent the lower surface of the frame from fitting flat on the gums. The shoulder formation, the dentitions and the acrylic are means that would allow the user to remove the magnetic means if it should be come damaged. It is a design choice to provide the acrylic compound mass in a tooth color or a flesh color. The screws threads in the magnetic means are an alternative means of holding the magnetic means in place on the user's teeth. Titanium is a choice of material used to form the frames.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/
Primary Examiner, Art Unit 3772